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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **MICHAEL BARKER,**

11 **Plaintiff,**

12 **v.**

13 **OM NAMO SHIVAM, INC.; AND**
14 **DOES 1 THROUGH 10, Inclusive**

15 **Defendants.**

16 **Case No.:**

17 **COMPLAINT**

18 **DISCRIMINATORY**
19 **PRACTICES IN PUBLIC**
20 **ACCOMMODATIONS**

21 **[42 U.S. C. §12182(a) ET. SEQ;**
22 **CA CIVIL CODE 51, 52, 54, 54.1,**
23 **54.3]**

24 **DEMAND FOR JURY TRIAL**

25 **INTRODUCTION**

26 1. Plaintiff MICHAEL BARKER herein complains, by filing this Civil
27 Complaint in accordance with rules of Civil Procedure within this court that
28 Defendants have in the past, and presently are, engaging in discriminatory practices
against individuals with disabilities. Therefore, Plaintiff makes the following
allegations in this civil rights action:

1 The property that is the subject of this action is located in San Luis Obispo
County.

1 3. The federal jurisdiction of this action is based on 42 U.S.C. 12101 Et. seq.
 2 Venue in the Judicial District of the United States District Court of the Central
 3 District of California is in accordance with 28 U.S.C. § 1391(b) because a substantial
 4 part of Plaintiff's claims arose within the Judicial District of the United States
 5 District Court of the Central District of California.

6 **SUPPLEMENTAL JURISDICTION**

7 4. The Judicial District of the United States District Court of the Central District
 8 of California has supplemental jurisdiction over the state claims as alleged in this
 9 Complaint pursuant to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is
 10 proper in this action is because all the causes of action or claims derived from federal
 11 law and those arising under state law, as herein alleged, arose from common nucleus
 12 of operative facts. The common nucleus of operative facts, include, but are not
 13 limited to, the incidents where Plaintiff was denied full and equal access to
 14 Defendants' goods, and/or services in violation of both federal and state laws when
 15 he attempted to enter, use, and/or exit Defendants' services as described within
 16 paragraphs 8 through 13 of this Complaint. Further, due to this denial of full and
 17 equal access, Plaintiff and other individuals with disabilities were injured. Based
 18 upon the said allegations the state actions, as stated herein, are so related to the
 19 federal actions that they form part of the same case or controversy, and the actions
 20 would ordinarily be expected to be tried in one judicial proceeding.

21 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

22 5. Defendants are, and, at all times mentioned herein, were, a business or
 23 corporation or franchise organized and existing and/or doing business under the laws
 24 of the State of California. Plaintiff is informed and believes and thereon alleges
 25 that Defendant OM NAMO SHIVAM, INC. is the operator of the business known as
 26 Rockview Inn and Suites located at 1080 Market Ave., Morro Bay, CA 93442.
 27
 28

1 Plaintiff is informed and believes and thereon alleges that Defendant OM NAMO
2 SHIVAM, INC. is the owner, operator, and/or lessor of the real property located at
3 1080 Market Ave., Morro Bay, CA 93442.

4 6. The words Plaintiffs and Plaintiff as used herein specifically include
5 MICHAEL BARKER.

6 7. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
7 employers, employees, and/or agents of OM NAMO SHIVAM, INC.. Plaintiff is
8 ignorant of the true names and capacities of Defendants sued herein as Does 1
9 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
10 Plaintiff will pray leave of the court to amend this complaint to allege the true names
11 and capacities of the Does when ascertained.

12 8. Plaintiff is informed and believes and thereon alleges, that Defendants and
13 each of them herein were, at all times relevant to the action, the owner, lessor, lessee,
14 franchiser, franchisee, general partner, limited partner, agent, employee, representing
15 partner, or joint venturer of the remaining Defendants and were acting within the
16 course and scope of that relationship. Plaintiff is further informed and believes, and
17 thereon alleges, that each of the Defendants herein gave consent to, ratified, and/or
18 authorized the acts alleged herein to each of the remaining Defendants.

19
20 **CONCISE SET OF FACTS**

21 9. Plaintiff MICHAEL BARKER ("BARKER") has physical impairments.
22 Plaintiff BARKER said physical impairments substantially limit one or more of the
23 following major life activities including but not limited to: walking. Plaintiff
24 BARKER is unable to walk long distances and he is not able to run, jump or climb
25 like people under the standard deviation curve.

26 10. In September 2014, Plaintiff BARKER went to Defendants' public
27 accommodation facilities known as Rockview Inn and Suites located at 1080 Market
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1 Ave., Morro Bay, CA 93442, to utilize their goods and/or services. When Plaintiff
2 BARKER patronized Defendants' facilities, he was denied equal access to and had
3 difficulty using the public accommodations' facilities since Defendants' facilities
4 failed to comply with Americans With Disabilities Act Accessibility Guidelines
5 ("ADAAG", codified at 28 CFR Part 36, Appendix A), and California's Title 24
6 Building Code Requirements. Defendants failed to remove barriers to equal access
7 within their public accommodation facilities. Plaintiff BARKER personally
8 experienced difficulty with said barriers to equal access that relate to his disabilities
9 at Defendants' facilities. The examples listed below of known barriers to equal
10 access are not an exhaustive list of the barriers to equal access that relate to his
11 disabilities that exist at Defendants' facilities.

12 11. For example, the access barriers personally experienced by Plaintiff are:
13 Defendants parking facilities failed to provide the required compliant Van
14 Accessible disabled parking space or regular disabled parking space. Defendant had
15 no compliant disabled parking at the property. The existing disabled parking had no
16 access aisle. Plaintiff BARKER requires the use of a compliant accessible disabled
17 parking space to safely exit and re-enter his vehicle. Defendants' failure to provide
18 the required compliant disabled parking and disabled parking disability signage
19 caused Plaintiff BARKER great difficulty in safely parking at Defendants'
20 establishment since BARKER may be precluded from exiting or re-entering his
21 vehicle if the disabled parking and disabled parking signage is not present and others
22 park improperly. Defendant failed to provide the required van accessible disabled
23 parking signage including tow-away signage. Defendant parking facilities also failed
24 to provide a van accessible disabled parking space that had the required access aisle
25 that formed a part of an accessible route to the entrance (ADAAG 4.6.3). Defendant
26 failed to provide the required van accessible disabled parking space with an access
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1 aisle of the required width. Defendants failed to provide the required \$250 tow away
2 signage. There was no marked path of travel from the parking to the entrance of the
3 facility. Moreover, there was a threshold at the entrance to the disabled room. Also,
4 the piping under the sink failed to have the proper insulation.

5 12. Plaintiff can prove these barriers exist since Plaintiff confirmed the access
6 barriers at Defendants' facility. Plaintiff specifically alleges that Defendants knew,
7 to a substantial certainty, that the architectural barriers precluded wheelchair access.
8 First, Plaintiff will prove that Defendants had actual knowledge that the architectural
9 barriers precluded wheelchair access and that the noncompliance with ADAAG and
10 Title 24 of the California Building Code as to accessible features was intentional.

11 13. Second, due to the abundance of disability rights information and constant
12 news coverage of disability discrimination lawsuits, Defendants had actual
13 knowledge of the state disability laws and ADAAG access requirements and decided
14 deliberately not to remove architectural barriers. Plaintiff alleges any alternative
15 methods preclude integration of wheelchair patrons, as it requires them to use
16 second-class facilities. Also, expert testimony will show the facility contained
17 inaccessible features

18 14. Plaintiff BARKER intends to return to Defendants' public accommodation
19 facilities in the immediate future. Plaintiff BARKER is presently deterred from
20 returning due to his knowledge of the barriers to equal access that exist at
21 Defendants' facilities that relate to his disabilities.

22 15. Pursuant to state law and federal ADAAG access requirements, Defendants
23 are required to remove barriers to their existing facilities. Further, Defendants had
24 actual knowledge of their access barrier removal duties under the state disability
25 laws. Also, Defendants should have known that individuals with disabilities are not
26 required to give notice to a governmental agency before filing suit alleging
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Defendants failed to remove architectural barriers to access.

16. Plaintiff believes and herein alleges Defendants' facilities have access violations not directly experienced by Plaintiff BARKER but are related to his disability that would preclude or limit equal access by BARKER, potentially including but not limited to violations of the ADAAG and Title 24 of the California Building Code.

17. Based on these facts, Plaintiff alleges he was discriminated against each time he patronized Defendants' facilities.

NOTICE

18. Plaintiff is not required to provide notice to the defendants prior to filing a complaint. Skaff v Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832 (9th Cir. 2007), see also, Botosan v. Paul McNally Realty, 216 F.3d 827, 832 (9th Cir 2000).

WHAT CLAIMS PLAINTIFF IS ALLEGING AGAINST EACH NAMED DEFENDANT

19. OM NAMO SHIVAM, INC.; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

20. Plaintiff aver that the Defendants are liable for the following claims as alleged below:

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The Americans With Disabilities Act Of 1990

CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal Access

21. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in this complaint, Plaintiff MICHAEL BARKER was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Plaintiff alleges Defendants are a public accommodation owned, leased and/or operated by

Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff MICHAEL BARKER was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff MICHAEL BARKER was denied equal access to Defendants' existing facilities.

22. Plaintiff MICHAEL BARKER has physical impairments as alleged in ¶ 8 above because his conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff MICHAEL BARKER's said physical impairments substantially limits one or more of the following major life activities: walking. In addition, Plaintiff MICHAEL BARKER cannot perform one or more of the said major life activities in the manner, speed, and duration when compared to the average person. Moreover, Plaintiff MICHAEL BARKER has a history of or has been classified as having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A Manner That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals With Disabilities

23. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in this complaint, Plaintiff MICHAEL BARKER was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or could affect the usability of the facility or a part of the facility after January 26, 1992. In performing the alteration, Defendants failed to make the alteration in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

24. Additionally, the Defendants undertook an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function after January 26, 1992. Defendants further failed to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

25. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the maximum extent feasible, are readily accessible to and usable by individuals with disabilities constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants discriminated against Plaintiff in violation of 42 U.S.C. § 12182(a).

26. Thus, Plaintiff MICHAEL BARKER was subjected to discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff MICHAEL BARKER was denied equal access to Defendants' existing facilities.

CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers

27. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in this complaint, Plaintiff MICHAEL BARKER was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiff is informed, believes, and thus alleges that architectural barriers which are structural in nature exist within the following physical elements of Defendants' facilities including but not limited to the disabled parking, exterior path of travel, and restroom facilities, as said facilities

were not accessible because they failed to comply with the Federal ADA Accessibility Guidelines (“ADAAG”) and California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal access within their public accommodation facilities. Title III of the ADA requires places of public accommodation to remove architectural barriers that are structural in nature to existing facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and disparate treatment against a person who has a known association with a person with a disability are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff MICHAEL BARKER was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because he was denied equal access to Defendants' existing facilities.

CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And Procedures

28. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies and procedures in that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. § 12188(a). Thus, Plaintiff MICHAEL BARKER was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff MICHAEL BARKER was denied equal access to Defendants' existing facilities.

29. Based on the facts plead at ¶¶ 8 - 16 above, Claims I, II, III and IV of Plaintiff's First Cause Of Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm unless Defendants are ordered to remove architectural, non-architectural, and communication barriers at Defendants'

1 public accommodation. Plaintiff alleges that Defendants' discriminatory conduct is
 2 capable of repetition, and this discriminatory repetition adversely impacts Plaintiff
 3 and a substantial segment of the disability community. Plaintiff alleges there is a
 4 national public interest in requiring accessibility in places of public accommodation.
 5 Plaintiff has no adequate remedy at law to redress the discriminatory conduct of
 6 Defendants. Plaintiff desires to return to Defendants' places of business in the
 7 immediate future. Accordingly, the Plaintiff alleges that a structural or mandatory
 8 injunction is necessary to enjoin compliance with federal civil rights laws enacted for
 9 the benefit of individuals with disabilities.

10 30. WHEREFORE, Plaintiff prays for judgment and relief as hereinafter set forth.
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12
 13 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS**
 14 **UNDER CALIFORNIA ACCESSIBILITY LAWS**

15 CLAIM I: **Denial Of Full And Equal Access**

16 31. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in this complaint,
 17 Plaintiff BARKER was denied full and equal access to Defendants' goods, services,
 18 facilities, privileges, advantages, or accommodations within a public accommodation
 19 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54,
 20 54.1, and specifically 54.1(d). Defendants' facility violated state disability access
 21 laws, the ADAAG (codified at 28 CFR Part 36, Appendix A), and California's Title
 22 24 Accessible Building Code by failing to provide equal access to Defendants'
 23 facilities to persons with disabilities.

24 32. Defendants denied Plaintiff BARKER full and equal access to Defendants'
 25 facility. Thus, Plaintiff BARKER was subjected to discrimination pursuant to Civil
 26 Code §§ 54, 54.1, and 54.3 because Plaintiff BARKER was denied full, equal and
 27 safe access to Defendants' facility.
 28

1 CLAIM II: **Failure To Modify Practices, Policies And Procedures**

2 33. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere herein this
 3 complaint, Defendants failed and refused to provide a reasonable alternative by
 4 modifying its practices, policies, and procedures in that they failed to have a scheme,
 5 plan, or design to assist Plaintiff and/or others similarly situated in entering and
 6 utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff
 7 BARKER was subjected to discrimination in violation of Civil Code § 54.1.

8 CLAIM III: **Violation Of The Unruh Act**

9 34. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere herein this
 10 complaint and because Defendants violated the CA Civil Code § 51 by specifically
 11 failing to comply with Civil Code §51(f). Defendants' facility violated state
 12 disability laws, the ADAAG (codified at 28 CFR Part 36, Appendix A), and
 13 California's Title 24 Accessible Building Code by failing to provide equal access to
 14 Defendants' facilities. Defendants did and continue to discriminate against Plaintiff
 15 in violation of Civil Code §§ 51(f), and 52.

16 35. Based on the facts plead at ¶¶ 8 - 16 above, Claims I, II, and III of Plaintiffs'
 17 First Cause Of Action above, and the facts elsewhere herein this complaint, Plaintiff
 18 will suffer irreparable harm unless Defendants are ordered to remove architectural,
 19 non-architectural, and communication barriers at Defendants' public
 20 accommodation. Plaintiff alleges that Defendants' discriminatory conduct is capable
 21 of repetition, and this discriminatory repetition adversely impacts Plaintiff and a
 22 substantial segment of the disability community. Plaintiff alleges there is a state
 23 public interest in requiring accessibility in places of public accommodation. Plaintiff
 24 has no adequate remedy at law to redress the discriminatory conduct of Defendants.
 25 Plaintiff desires to return to Defendants' places of business in the immediate future.
 26 Accordingly, the Plaintiff alleges that a structural or mandatory injunction is
 27 necessary to enjoin compliance with state civil rights laws enacted for the benefit of
 28

1 individuals with disabilities.

2 36. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.

3
4 **Treble Damages Pursuant To Claims I, II, III Under The California**
5 **Accessibility Laws**

6 37. Defendants, each of them respectively, at times prior to and including the day
7 Plaintiff patronized Defendants' facilities, and continuing to the present time, knew
8 that persons with physical disabilities were denied their rights of equal access to all
9 portions of this public accommodation facility. Despite such knowledge,
10 Defendants, and each of them, failed and refused to take steps to comply with the
11 applicable access statutes; and despite knowledge of the resulting problems and
12 denial of civil rights thereby suffered by Plaintiff. Defendants, and each of them,
13 have failed and refused to take action to grant full and equal access to Plaintiff in the
14 respects complained of hereinabove. Defendants, and each of them, have carried out
15 a course of conduct of refusing to respond to, or correct complaints about, denial of
16 disabled access and have refused to comply with their legal obligations to make
17 Defendants' public accommodation facilities accessible pursuant to the ADAAG and
18 Title 24 of the California Code of Regulations (also known as the California
19 Building Code). Such actions and continuing course of conduct by Defendants in
20 conscious disregard of the rights and/or safety of Plaintiff justify an award of treble
21 damages pursuant to sections 52(a) and 54.3(a) of the California Civil Code. The
22 California Supreme Court has stated: "...the statute provides for damages aside
23 from any actual damages incurred by the plaintiff. 'This sum is unquestionably a
24 penalty which the law imposes, and which it directs shall be paid to the complaining
25 party. ... [But], while the law has seen fit to declare that it shall be paid to the
26 complaining party, it might as well have directed that it be paid into the
27 common-school fund. The imposition is in its nature penal, having regard only to the
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fact that the law has been violated and its majesty outraged’.” *Koire v Metro Car Wash* (1985) 40 Cal.3d 24, 33-34 [citing its decision in *Orloff v. Los Angeles Turf Club* (1947) 30 Cal.2d 110, 115].

38. Defendants, and each of their actions have also been oppressive to persons with physical disabilities including Plaintiff and have evidenced actual or implied malicious intent toward Plaintiff who has been denied the proper access to which he is entitled by law. Further, Defendants and each of their refusals or omissions to correct these problems evidence disregard for the rights of Plaintiff.

39. Plaintiff prays for an award of treble damages against Defendants, and each of them, pursuant to California Civil Code sections 52(a) and 54.3(a).

40. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.

DEMAND FOR JUDGMENT FOR RELIEF:

A. For actual damages pursuant to Cal. Civil Code §§ 52 or 54.3;

B. For \$4,000 in minimum statutory damages pursuant to Cal. Civil Code § 52 for each and every offense of Civil Code § 51, pursuant to Munson v. Del Taco, (June 2009) 46 Cal. 4th 661;

C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above, for \$1,000 in minimum statutory damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code § 54.1;

D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 52. Plaintiff requests this Court enjoin Defendants to remove all architectural and communication barriers in, at, or on their facilities including without limitation violations of 42 U.S.C. § 12188(a) and Cal. Civil Code § 51. Plaintiff does not seek injunctive relief pursuant to Cal. Civil Code § 55 and does not seek attorneys fees pursuant to Cal. Civil Code § 55.

E. For attorneys' fees pursuant to 42 U.S.C. § 12205 and Cal. Civil Code §§ 52, 54.3;

- 1 F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
2 G. A Jury Trial and;
3 H. For such other further relief as the court deems proper.
4

5 Respectfully submitted:

6 LAW OFFICES OF DAVID C. WAKEFIELD

7 Dated: July 24, 2015

8 By: /s/David C. Wakefield
9 DAVID C. WAKEFIELD, ESQ.
10 Attorney for Plaintiff
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